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 TINA GRIETENS, UTILITY SUPERINTENDENT
 JON SEITZ, GENERAL COUNSEL

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 (805) 929-1133 FAX (805) 929-1932 Website address: ncsd.ca.gov

October 11, 2011

County Board of Supervisors
 Room D-430
 County Government Center
 San Luis Obispo, California 93408

Dear Chairperson Hill, Vice-Chairperson Patterson, Supervisor Teixeira, Supervisor Gibson, and Supervisor Mecham:

SUBJECT: REQUEST TO FORM THE PROPOSED NIPOMO COMMUNITY SERVICES DISTRICT ASSESSMENT DISTRICT (SUPPLEMENTAL WATER PROJECT)

The Nipomo Community Services District (the "District") is contemplating taking on the responsibility of forming the proposed assessment district for the financing of the water improvements relating to its supplemental water project, including the pipeline and related facilities such as pumps, storage tanks and pressure relief valves that would connect the City of Santa Maria's water distribution system to the District's water distribution system. As you are aware, currently the District and the County of San Luis Obispo (the "County") have a Memorandum of Understanding in which the County has agreed to be the forming agency for the proposed assessment district.

Enclosed please find a memorandum detailing the reasons the District desires to be the forming agency. If the County determines to allow the District to be the forming agency for the assessment district, assessment law, specifically Sections 5117, 5118 and 10103 of the California Streets and Highways Code, requires that the District receive consent and approval of the resolution of intention for the assessment district from any jurisdictions (i) in which land lying outside the boundaries of the District is contemplated to be included in the proposed assessment district, and (ii) in which improvements to be financed by the assessment district lie (if outside the boundaries of the District). Therefore, the District is requesting that the San Luis County Board of Supervisors consider the attached Resolution giving such consent to the assumption of jurisdiction for outside properties and improvements to be included in the assessment district, as well as approval of the form of the resolution of intention (attached as Exhibit A to the County Resolution).

If you have any questions, please contact me.

Very truly yours,

NIPOMO COMMUNITY SERVICES DISTRICT



Michael S. LeBrun
General Manager

Enclosure(s):

- October 7, 2011 deCrisis & Co., INC Memorandum
- Draft Resolution of Board of Supervisors (Granting Consent to Conduct Assessment)
- Draft Resolution of Nipomo Community Services District (Intent to Form Assessment District)

C:

- Nipomo Community Services District Board of Directors
- NCSD District Legal Counsel (Shipsey & Seitz, Inc.)
- County of San Luis Obispo Public Works Director
- Fulbright & Jaworski L.L.P.
- C.M. de Crinis & Co.

Financial Advisors, Public Finance
Serving California and Hawaii



MEMORANDUM

DATE: October 7, 2011

TO: Michael LeBrun – General Manager

FROM: Curt de Crinis & Paul McDonnell

RE: Nipomo Community Services District Bond Program

As you have requested, listed below are reasons that the Nipomo CSD should be considered as the lead/sole agency for planned assessment district financing.

1. Nipomo is the agency designing, bidding and managing the construction of the project. Nipomo will also be the agency owning the improvements. The financing of the project should therefore be managed and controlled by Nipomo. This will help assure the financing and the financing schedule is coordinated closely with the construction schedule. The fact that a portion of the proposed assessment financing also relate to agreements between other water companies and the City of Santa Maria further illustrate this point.

2. The source of repayment will be assessments levied on parcels primarily within the corporate boundaries of Nipomo and the other private water suppliers involved. The parcels assessed are customers of Nipomo directly or through water supply agreements with the three private water suppliers. Public outreach and inquiries about the assessment district, financing and the project are best managed by Nipomo.
3. Assessment bonds, once issued, require annual administration including preparation of the annual tax levy, correct records of prepayments, bond calls and decisions on foreclosure covenant actions for delinquent assessments. As the Agency responsible for the project overall Nipomo is best positioned to administer such actions with its customer base and its requirements. Managing this relationship with the customer base may be important in maintaining support for future water rates and other issues.
4. Nipomo's management of its own financing program reduces complexity, costs and time delays associated with the review, approval and issuance of the financing by an outside agency such as the County. Issuance by an outside agency requires additional legal reviews, staff review, board actions, public outreach, and increases risks of confusion and uncoordinated actions. Nipomo will be a better position to assure flexibility is maintained. This will help assure property owners are assessed at the lowest amounts possible.
5. Nipomo has issued bonds in the past and intends on issuing bonds next year for its Southland wastewater project. Nipomo has also issued assessment bonds and currently administers an assessment district. Nipomo has retained qualified professionals and legal counsel with experience working with assessment and water financing. These professionals are also familiar with the Nipomo's finances. The Nipomo staff is confident it is receiving the legal and financial advice required to successfully complete the financing program.

Michael S. LeBrun, Interim General Manager
 Jon S. Seitz, Esq., General Counsel
 April 18, 2011
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by which a city, county or public corporation may obtain consent to expand the boundaries of the assessment district and allow for work outside the jurisdiction of the forming entity. A community services district is considered a public corporation and therefore may utilize these provisions.⁶

The NCSD may wish to form the assessment district in lieu of the County. The procedure entails obtaining the consent of any city or county in which either (i) property to be assessed or (ii) work to be financed, lie outside the boundaries of the NCSD. Section 5115 provides that the Board of the NCSD find that the public interest or convenience requires that "the proposed work is of such a character that it directly and peculiarly affects property in two or more cities, or in one or more cities and counties, and that the purposes sought to be accomplished by the work can best be accomplished by a single, comprehensive scheme of work."

Before the NCSD may adopt a resolution of intention to form the assessment district it must first obtain consent of the County by submitting the proposed resolution of intention to the Board of the County. The County may then give its consent through the adoption of a resolution that consents to the work within its boundaries, the assumption of jurisdiction by the NCSD over the parcels to be assessed and the proposed resolution of intention.⁷ Should any of the work lie outside of the boundaries of the County, the NCSD must obtain the consent of those entities as well (i.e., the City of Santa Maria).

If the NCSD determines to form the assessment district then it would also be the issuer of the assessment bonds. All responsibility for the issuance, administration and monitoring of the

⁶ Section 10003. "'Municipality' and 'city' include every city, city and county, or county, or other entity, public corporation, or agency authorized to operate under this division [emphasis added], including any joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and any special district organized for the purpose of aiding in the development or improvement of navigation or commerce to, or within, the district."

⁷ Sections 5117 and 5118.

"Section 5117. The city may include within the boundaries of an assessment district created pursuant to this division lands lying within the boundaries of any one or more cities, or counties, when such lands, in the opinion of the legislative body conducting the proceeding, will be benefited by the proposed work if the consent of the legislative body of any territory proposed to be assessed shall first be obtained to the formation of the assessment district and, if any of the proposed work is to be done within such territory, to the work described in the resolution of intention and the assumption of jurisdiction thereover for the purposes aforesaid prior to the adoption thereof."

"Section 5118. The proposed resolution of intention shall be submitted to the legislative bodies which have jurisdiction over the territory into which the proposed work or the assessment district therefor may extend. When the resolution of intention is approved and the consent of the legislative bodies whose consent is necessary is obtained to the work and the formation of the assessment district described therein, the resolution of intention may be adopted. The consent if any shall, of itself, constitute assent to the assumption of jurisdiction thereover for all purposes of the proceeding and authorize the legislative body initiating the proceeding to take each and every step required for or suitable for the consummation of the work extending outside the limits of the city, and the levying, collecting and enforcement of the assessments to cover the expenses thereof and the issuance and enforcement of bonds to represent unpaid assessments."

Michael S. LeBrun, Interim General Manager
Jon S. Seitz, Esq., General Counsel
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assessment district and bond issue would lie with the NCSD, including fielding questions from property owners, accepting prepayments, placing the assessment roll on the tax roll, complying with continuing disclosure, etc.

We hope this discussion of an alternative approach to form the assessment district is helpful to the Board of the NCSD in moving forward with the proposed financing of the Nipomo-Mesa Water Intertie Project.

MLG

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within the Assessment District and (b) the agreement by Nipomo CSD as specified in the Resolution of Intention that Nipomo CSD shall hold harmless and indemnify the County, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the County in reviewing and granting its consent to the formation of the Assessment District and approving the Resolution of Intention and the Improvements.

Section 4. The County Clerk of the County is hereby directed to certify and transmit a copy of this Resolution to the Secretary of Nipomo CSD.

Section 5. This resolution shall take effect immediately upon its adoption.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

By _____
Chairperson of the Board of Supervisors
County of San Luis Obispo

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN JENSEN

County Counsel

By: _____
Deputy County Counsel

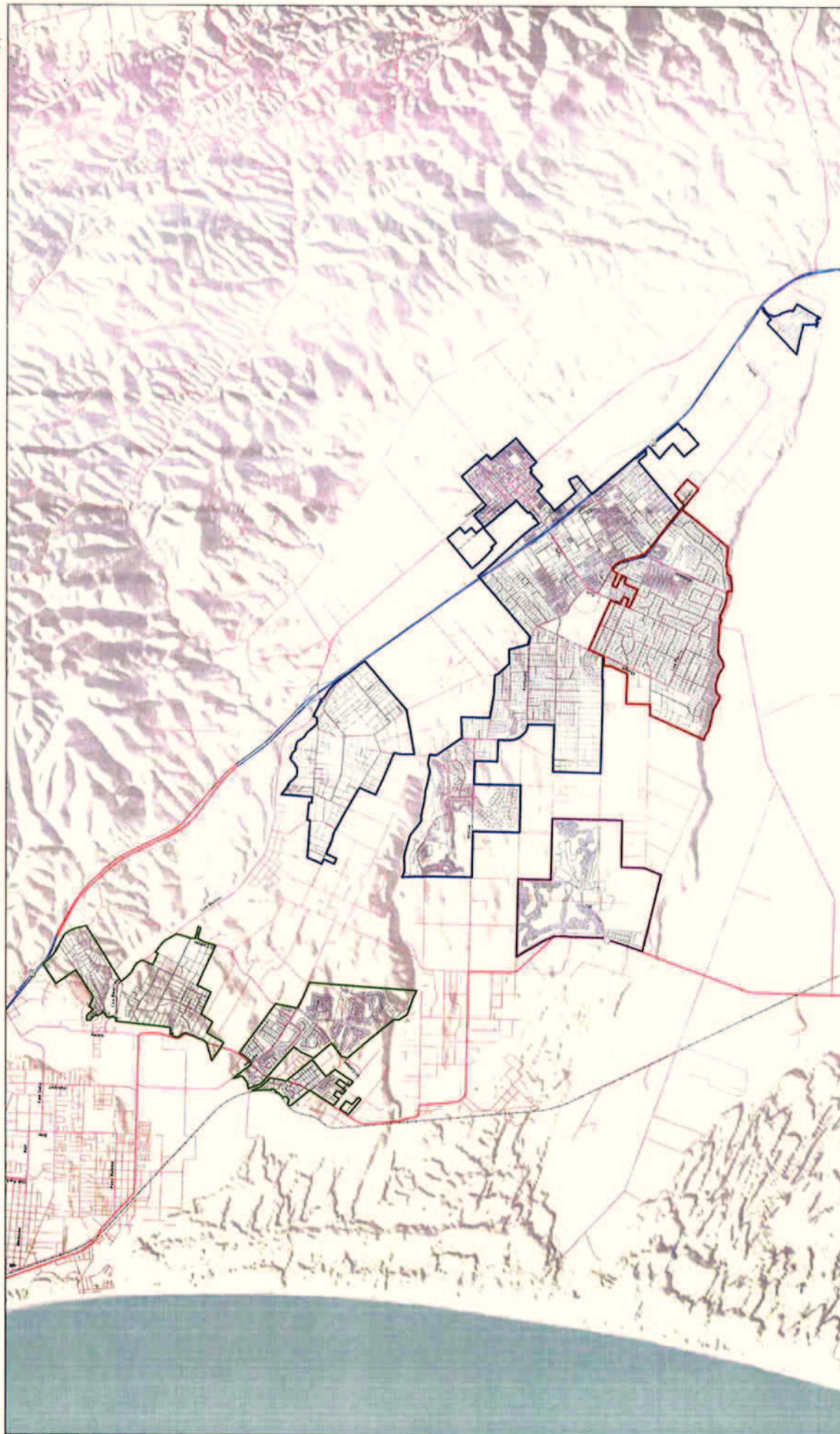
Dated: _____

EXHIBIT "A"

RESOLUTION NO. 2012-_____

OF THE NIPOMO COMMUNITY SERVICES DISTRICT

(proposed Boundary Map)



NOTES:
BASEMAP COMPILED FROM
AIRC PHOTOGRAPHY
AND DATA PROVIDED BY
LOCAL GOVERNMENTS
GROUP WALLACE GROUP, LLC
SERVICES FOR THE MAP
NOT A LEGAL DOCUMENT.

MAP PRODUCED: JANUARY 2010



WIP ASSESSMENT DISTRICT PROJECT BASEMAP

- Legend**
- GDWC Assessment Boundary
 - NCSD Assessment Boundary
 - WMSC Assessment Boundary
 - RVC Assessment Boundary
 - Assessment Parcels

WALLACE GROUP
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10/7/11

RESOLUTION NO. _____**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT DECLARING ITS INTENTION TO ORDER IMPROVEMENTS FOR PROPOSED ASSESSMENT DISTRICT NO. 2012-1 (SUPPLEMENTAL WATER PROJECT) PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND IN ACCORDANCE WITH ARTICLE XIID OF THE CALIFORNIA CONSTITUTION, AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the Board of Directors of the Nipomo Community Services District ("District"), desires to initiate proceedings for the formation of an assessment district (the "Assessment District"), pursuant to the provisions of the Municipal Improvement Act of 1913 (the "Improvement Act"), being Division 12 (commencing with Section 10000) of the Streets and Highways Code of the State of California, Article XIID of the Constitution of the State of California ("Article XIID"), the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, being Division 4 of the Streets and Highways Code of the State of California (commencing with Section 2800), and the Proposition 218 Omnibus Implementation Act (commencing with Section 53750) of the Government Code of the State of California, and for the issuance of bonds in the proceedings under the Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State of California (commencing with Section 8500) (the "Bond Act"), for the purpose of financing certain public capital water improvements (the "Improvements"), of benefit to the properties within the proposed Assessment District; and

WHEREAS, the territory proposed for inclusion in the proposed Assessment District includes parcels of land located within the District as well as certain other parcels of land located in whole or in part within the County of San Luis Obispo ("San Luis Obispo County") that, in the opinion of the Board of Directors, will be specially benefited by the Improvements; and

WHEREAS, a portion of the Improvements are proposed to be located within San Luis Obispo County, the City of Santa Maria (the "City of Santa Maria") [and the County of Santa Barbara (the "Santa Barbara County")]; and

WHEREAS, pursuant to Section 10103 of the Improvement Act and Sections 5117 and 5118 of the Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code, before the Board of Directors may adopt a resolution of intention initiating such proceedings, it must submit the proposed Resolution of Intention to and obtain the consent of (i) the Board of Supervisors of the San Luis Obispo County (the "San Luis Obispo County Board"), (ii) the City Council of the City of Santa Maria (the "Santa Maria City Council") [and (iii) the Board of Supervisors of Santa Barbara County (the "Santa Barbara County Board")] to the formation of the proposed Assessment District and the approval of the Resolution of Intention and the proposed Improvements;

WHEREAS, the Board of Directors has received consent from San Luis Obispo County Board as to the inclusion of territory outside the boundaries of the District, and has received

consent from the San Luis Obispo County Board, Santa Maria City Council [and Santa Barbara County Board] for the proposed Improvements; and

WHEREAS, the public interest and convenience require the construction and acquisition of the Improvements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District:

Section 1. The above recitals are true and correct.

Section 2. The proposed improvements (the "Improvements") generally consist of the acquisition and financing of certain public capital water improvements, including water acquisition charges constituting capital charges, as more particularly described on Exhibit A attached hereto.

Section 3. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that the proposed Improvements is of such a character that it directly and peculiarly affects property in one or more jurisdictions, and that the purposes sought to be accomplished by the proposed Improvements can best be accomplished by a single, comprehensive scheme of work, thereby requiring inclusion of Improvements and property that lie outside the territorial limits of the District.

Section 4. In the opinion of the Board of Directors, the Board of Directors hereby finds and determines that the public interest and convenience require that property within the boundaries of the Assessment District lying outside the jurisdiction of the District will be benefitted by the proposed Improvements, and that the consents of the legislative bodies having jurisdiction over any such property proposed to be assessed have been obtained to (i) the formation of the Assessment District and (ii) the assumption by the District of jurisdiction thereover. The consents of the legislative bodies which contain the proposed Improvements that lie outside of the boundaries of the District have been obtained to (y) the formation of the Assessment District and the proposed Improvements to be done within such territory, and (z) the assumption by the District of jurisdiction thereover.

Section 5. The District shall hold harmless and indemnify San Luis Obispo County, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the San Luis Obispo County Board in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 6. The District shall hold harmless and indemnify the City of Santa Maria, its officers and employees, from any and all causes of action, claims, losses or damages which may arise, directly or indirectly, from the action of the Santa Maria City Council in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.

Section 7. The District shall hold harmless and indemnify Santa Barbara County, its officers and employees, from any and all causes of action, claims, losses or damages which may

arise, directly or indirectly, from the action of the Santa Maria City Council in reviewing and granting its consent to the formation of the Assessment District and approving this Resolution of Intention form and the Improvements.]

Section 8. The Board of Directors hereby (i) finds that the public interest, necessity and convenience require the acquisition, improvement, and financing of the Improvements, and (ii) declares its intention to order the Improvements and form an assessment district to be known as the “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project)” pursuant to the Improvement Act. Unless otherwise specifically provided, all Improvements and work to be funded by the Assessment District shall be made and done pursuant to the Improvement Act.

Section 9. The Board of Directors hereby declares that the territory within the boundaries hereinafter specified and described as the Assessment District is the land benefitted by the Improvements to be made and to be assessed to pay the costs and expenses thereof; that the expense of the Improvements is hereby made chargeable upon the Assessment District; and that the exterior boundaries of the Assessment District are hereby specified and described to be shown on that certain map now on file in the office of the Secretary of the District entitled “Nipomo Community Services District Assessment District No. 2012-1 (Supplemental Water Project) Assessment Diagram/Boundary Map,” which map indicates by a boundary line the extent of the territory included in the proposed Assessment District. On the original and a copy of the map of the Assessment District on file in the Secretary’s office, the Secretary shall endorse the certificate evidencing the date and adoption of this Resolution of Intention. The Secretary shall file the original of such map in his or her office and, within fifteen (15) days after adoption of the resolution fixing the time and place of hearing on the formation and extent of the Assessment District, the Secretary shall file a copy of such map so endorsed in the records of the County Recorder, County of San Luis Obispo, State of California.

Section 10. The Board of Directors hereby appoints and designates the District Engineer to perform the duties and functions of the Superintendent of Streets in connection with such proceedings.

Section 11. The proposed Improvements are hereby referred to the Assessment Engineer to make and file with the Secretary of the District a report in writing in accordance with Article XIID, Section 4 of the California Constitution and Section 10204 of the Improvement Act. The District intends to comply with the requirements of Part 7.5 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, and hereby directs the Assessment Engineer to include in the report all of the information required in Section 2961 of the California Streets and Highways Code.

Section 12. The Board of Directors hereby determines that it is in the public interest and more economical to do work on private property to eliminate any disparity in level or size between the proposed Improvements and private property than to adjust the work on public property to eliminate such disparity.

Section 13. The Board of Directors hereby declares its intention to enter into an agreement or agreements with the City of Santa Maria and any other public agency, regulated

public utility or mutual water company pursuant to Chapter 2 of the 1913 Act (commencing with Section 10100) if any of the Improvements are to be owned, managed or controlled by any other public agency, regulated public utility or mutual water company.

Section 14. Pursuant to Section 4 of Article XIID of the Constitution of the State of California, parcels within the assessment district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment, unless the District can demonstrate by clear and convincing evidence that such publicly owned parcels in fact receive no special benefit.

Section 15. Notice is hereby given that bonds to represent unpaid assessments, and which bear interest at a fixed or variable interest rate of not to exceed twelve percent (12%) per annum, or such higher maximum interest rate as may be provided in the resolution of issuance, will be issued hereunder in the manner provided in the Bond Act, and the last installment of such bonds shall mature in not to exceed 39 years from the second of September next succeeding twelve (12) months from their date. The alternate procedure for collecting assessments and advance retirement of bonds as set forth in Part 11.1 of the Bond Act shall apply herein. Pursuant to Section 8650.1 of the Bond Act, the Board of Directors may determine that the principal amount of bonds maturing or becoming subject to mandatory prior redemption each year shall be other than the amount equal to an even annual proportion of the aggregate principal of the bonds.

Section 16. The Board of Directors hereby further declares that it is its intention to covenant that, upon default of any assessment payment due (except under certain circumstances to be specified in the fiscal agent agreement or trust indenture for the bonds) it will cause foreclosure proceedings to be brought within 150 days of such default, as permitted by Section 8830(b) of the Bond Act.

Section 17. The Board of Directors hereby further declares that it is its intention to create a special reserve fund as permitted by Sections 8880-8886 of the Bond Act.

Section 18. The Board of Directors hereby finds and determines that if the assessment proposed herein results in a surplus in the improvement fund to be provided for in the proceedings hereafter taken pursuant to this Resolution of Intention, after the improvements are acquired or constructed, the surplus shall be used or allocated in accordance with the provisions of Sections 10427 to 10427.2, inclusive, of the Improvement Act.

Section 19. The Board of Directors hereby designates the General Manager and Secretary to the Board of Directors (General Manager or Secretary depending on the context), or the designated agent of the General Manager, to collect and receive the assessments.

Section 20. Pursuant to Streets and Highways Code Section 8769, the Board of Directors hereby determines and declares that the District will not obligate itself to advance available funds from the District treasury to cure any deficiency which may occur in the bond redemption fund; provided, however, this determination shall not prevent the District from, in its sole and unbridled discretion, advancing funds for such purpose as otherwise provided in the Bond Act.

Section 21. The Board of Directors hereby further declares that the bonds issued for Assessment District No. 2012-1 shall be refundable in accordance with the provisions of the "Refunding Act of 1984 for 1915 Improvement Act Bonds." The specific conditions under which said bonds may be refunded include the condition that there be a reduction in the interest cost to maturity by reason of the refunding of such bonds and the condition that the refunding bonds shall bear interest at a maximum rate, and shall have a maximum number of years to maturity, not in excess of the maximum rate and years to maturity, respectively, then permitted by law. Any adjustment to assessments resulting from any such refunding will be done on a pro rata basis.

Section 22. It is the intention of the Board of Directors that the Nipomo Public Facilities Corporation shall initially purchase and hold certain of the bonds to finance the acquisition of water, and its related public capital improvement costs, from the City of Santa Maria.

Section 23. Whenever, in the Improvement Act or in the Bond Act a notice, resolution, order or other matter relative to said proceedings for the work, acquisitions and improvements in said assessment district is required to be published, the Secretary is hereby ordered to publish such notice, resolution or other matter in the Santa Maria Times and the Tribune, which is hereby selected by the Board of Directors for that purpose.

Section 24. The Secretary shall transmit a certified copy of this Resolution of Intention and Boundary Map to the County Clerk of San Luis Obispo, the City Clerk of the City of Santa Maria [and the County Clerk of Santa Barbara County].

Section 25. This resolution shall take effect immediately.

Upon a motion by Director _____, seconded by Director _____, on the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this ____ day of _____, 2011.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

JON S. SEITZ
District Legal Counsel

EXHIBIT A

The improvements proposed to be funded through Assessment District No. 2012-1 are briefly described as follows:

The design and construction of certain public capital water facilities, together with appurtenances and appurtenant work related thereto, including construction of a waterline to connect the City of Santa Maria water distribution system with the Nipomo Community Services District water distribution system, involving an underground pipeline with a nominal capacity of 3000 acre-feet to be installed under the Santa Maria river using horizontal directional drilling technique, the construction of a storage tank and booster station to deliver the water into the District's system, all related, permits, fees, bonds, construction management, construction engineering (e.g. soils, survey, archeological), and also including water charges and other fees related to the acquisition of water from the City of Santa Maria for related public capital water facilities designated by the City of Santa Maria, including but not limited to blending reservoir and water system capacity improvements.